
Formal Action

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

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)

STATE OF TENNESSEE,)

)

Plaintiff,)

)

v.) No.

)

SEARS, ROEBUCK and COMPANY, a)

foreign corporation,)

)

Defendant,)

)

COMPLAINT

This civil action is brought in the name of the State of Tennessee, by and through John Knox Walkup, Attorney General and Reporter ("Attorney General"), pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, at the request of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance (the "Division"), having reason to believe that the Defendant named herein has violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et. seq.*, and that this action is in the public interest.

I. JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the provisions of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County, pursuant to the provisions of Tenn. Code Ann. § 47-18-108(a)(3), because it is a county in which Defendant has conducted business. (An Affidavit and Verification of Mark Williams, Director, Division of Consumer Affairs, Department of Commerce and Insurance, is attached hereto as Exhibit A.)

II. PARTIES

2. Pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee, by John Knox Walkup, the Attorney General and Reporter, on behalf of and at the request of the Division. (See Exhibit A.)

3. Upon information and belief, Defendant Sears, Roebuck and Co. ("Sears"), is a corporation organized under the laws of the State of New York, including its subsidiaries Western Auto Supply Company ("Western Auto"). Sears is engaged in the consumer retail business and transacts commerce from its many stores and establishments located throughout the State of Tennessee, including several stores in Davidson County, Tennessee. Western Auto engages in the business of supplying automotive parts and services.

III. FACTUAL ALLEGATIONS

Upon information and belief, the State alleges as follows:

4. Defendant Sears, Roebuck and Company ("Sears") is in the business of offering for sale retail goods to consumers at department stores and establishments throughout the State of Tennessee. Sears sells a variety of consumer goods, including appliances, clothing, electronic goods, hardware, and toys, to consumers via their network of retail stores. Consumer may purchase Sears' goods and services using credit services offered by Sears. The credit is typically open-end and includes finance charges. In most

cases, the credit is accessed via a Sears Credit Card.

5. Many of the consumers who purchased goods from Sears have been unable to pay their debts to creditors generally, including debts to Sears incurred through the use of Sears' credit cards, and have sought protection by filing Chapter 7 bankruptcy in the federal court.

6. In an effort to continue collections on credit card debt incurred by consumers who have declared Chapter 7 bankruptcy, Sears has importuned such debtors to reaffirm their credit card debt that would otherwise be discharged through bankruptcy.

7. Upon obtaining the consumer's agreement to reaffirm his/her debt to Sears, Sears unlawfully failed to file or ensure the filing of the reaffirmation agreement and/or unlawfully failed to obtain the approval of the bankruptcy court prior to continuing to collect on the debt reaffirmed by the consumer.

8. After obtaining the reaffirmation agreements and failing to file such agreements with the bankruptcy court, Sears represented or continued to represent that the un-filed reaffirmation agreements were enforceable, including under Sears' rights and remedies contained in the Sears' credit card agreement. Sears continued to demand payments from consumers in connection with reaffirmation agreements not filed with court, and in many instances charged these consumers interest, late fees, and penalties during the collection processes, and/or cause inaccurate and damaging entries to be made on the credit reports of these consumers if they failed to pay the debt covered these invalid reaffirmation agreements.

9. Sears undertook these practices despite its knowledge that the post-bankruptcy collection of its credit card debts under these circumstances was unlawful. Western Auto has engaged in similar practices to those of Sears alleged above, including the failure to file reaffirmation agreements with the bankruptcy court.

10. The State of Tennessee files this Complaint alleging facts solely relating to consumers whose reaffirmation agreements were not filed in bankruptcy court.

IV. CAUSES OF ACTION

11. The State re-alleges all preceding paragraphs of this Complaint, and incorporates them herein.

12. Defendant has violated the Tennessee Consumer Protection Act of 1977, § 47-18-101, *et seq.* by engaging in various unfair, misleading or deceptive acts or practices, including, but not limited to:

a) making deceptive, misleading, false or unfair statements to consumers in order to obtain a consumers' agreement to reaffirm their debt to Sears in the course of the consumers' Chapter 7 bankruptcy proceedings;

b) misleading consumers regarding the consequences of a refusal to reaffirm debts during the course of

their bankruptcy;

- c) inducing consumers to reaffirm debts to Sears in violation of the Bankruptcy Code requirements for reaffirmation agreements;
- d) failing to file or failing to ensure the filing of, reaffirmation agreements with the Bankruptcy Court as required by law;
- e) misrepresenting to debtors that they are legally responsible to repay debts that have been reaffirmed in an improper manner;
- f) collecting or attempting to collect from consumers debts that have been discharged in Chapter 7 bankruptcy;
- g) continuing to charge additional interest and finance charges on consumer debts that Sears knew or should have known it had no right to collect; and
- h) falsely reporting to credit agencies that consumers have failed to pay lawful debts when in fact Sears knew that such debts had been discharged in Chapter 7 bankruptcy.

V. VIOLATIONS OF THE LAW

13. Defendant's activities in obtaining reaffirmation agreements from consumers relating to debts incurred by purchasing goods or services from the Defendant in this State constitutes "trade" or "commerce" and the offering of or providing of "goods" as defined in Tenn. Code Ann. § 47-18-103(5) and (9).

14. Consumers who enter into reaffirmation agreements are "consumers" as defined in Tenn. Code Ann. § 47-18-103(2) which provides that :

"consumer" means any natural person who seeks or acquires by purchase, rent, lease, assignment, award by chance, or other disposition, any goods, services, or property, tangible or intangible, real, person or mixed, and any other article, commodity, or thing of value wherever situated...

15. All of the acts and practices engaged in and employed by the Defendant as alleged herein are "unfair or deceptive acts or practices affecting the conduct of any trade or commerce" in Tennessee, which are declared unlawful by Tenn. Code Ann. § 47-18-104(a).

16. Each and every violation alleged herein engaged in by the Defendant as recited above constitutes a separate violation of the Tennessee Consumer Protection Act and each is punishable by a civil penalty of not more than one thousand dollars (\$1,000.00) as provided by Tenn. Code Ann. § 47-18-108(b).

17. The Defendant's conduct violates the stated purpose of the Tennessee Consumer Protection Act stated at Tenn. Code Ann. § 47-18-102 which provides, in pertinent part:

The provisions of this part shall be liberally construed to promote the following practices:

(2) To protect consumers and legitimate business enterprises from those who engage in unfair or deceptive acts or practices in the conduct of any trade or commerce in part or wholly within this state;

(3) To encourage and promote the development of fair consumer practices;

(4) To declare and to provide for civil legal means for maintaining ethical standards of dealing between persons engaged in business and the consumer public to the end that good faith dealings between buyers and sellers at all levels of commerce be had in this state....

18. Further, the Defendant has violated Tenn. Code Ann. § 47-18-104(b)(27), which prohibits engaging in any act or practice which is deceptive to the consumer or any other person. The Defendant's conduct which violates this part includes, but is not limited to:

- a) making deceptive, misleading, false or unfair statements to consumers in order to obtain a consumers' agreement to reaffirm their debt to Sears in the course of the consumers' Chapter 7 bankruptcy proceedings;
- b) misleading consumers regarding the consequences of a refusal to reaffirm debts during the course of their bankruptcy;
- c) inducing consumers to reaffirm debts to Sears in violation of the Bankruptcy Code requirements for reaffirmation agreements;
- d) failing to file or failing to ensure the filing of, reaffirmation agreements with the Bankruptcy Court as required by law;
- e) misrepresenting to debtors that they are legally responsible to repay debts that have been reaffirmed in an improper manner;
- f) collecting or attempting to collect from consumers debts that have been discharged in bankruptcy;
- g) continuing to charge additional interest and finance charges on consumer debts that Sears knew or should have known it had no right to collect; and
- h) falsely reporting to credit agencies that consumers have failed to pay lawful debts when in fact Sears knew that such debts had been discharged in bankruptcy.

19. By representing that non-filed reaffirmation agreements are enforceable or valid, when such agreements are unlawful, the Defendant has, directly or indirectly, represented that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. §47-18-104(b)(12).

20. As a result of the various violations of the Act as alleged herein, consumers and/or persons, the exact number of whom is presently unknown to the State, may have and/or have suffered ascertainable losses of money.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

(1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108 and 47-18-116.

(2) That process issue and be served upon Defendant pursuant to Tenn. Code Ann. § 20-2-201, requiring it to appear and answer this Complaint.

(3) That this Honorable Court adjudge and decree that Defendant has engaged in acts or practices in violation of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*, as previously set forth. (4) That this Court permanently enjoin and restrain the Defendant from engaging in deceptive and unfair practices set forth herein and from violating the Tennessee Consumer Protection Act of 1977.

(5) That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses (including statutory interest) suffered by reasons of the alleged violations of the Tennessee Consumer Protection Act.

(6) That the Court adjudge and decree that the Defendant is liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendant's actions, including attorneys' fees, as is provided by Tenn. Code Ann. § 47-18-108(b).

(7) That the Court adjudge and decree that the Defendant pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b).

(8) That all costs in this cause be taxed against Defendant.

(9) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.